

AMENDED IN SENATE APRIL 13, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 586

Introduced by Senator Pavley

February 17, 2011

An act to add Sections 953.5 and 14409.5 to the Financial Code, and to amend Section 368 of the Penal Code, relating to banks and credit unions.

LEGISLATIVE COUNSEL'S DIGEST

SB 586, as amended, Pavley. Banks and credit unions: signature stamps.

Existing law, the Banking Law, regulates the organization and operations of state-organized banks, and the California Credit Union Law regulates the organization and operation of credit unions, the willful violation of which is a crime. Existing law does not regulate the issuance or use of a signature stamp in financial transactions.

This bill would define "signature stamp" and regulate the issuance of a signature stamp by a state-organized bank or credit union to an accountholder and the use of the signature stamp by the accountholder in financial transactions with a bank or credit union. *The bill would require a stamp holder to report a lost or stolen signature stamp to the bank or credit union, as specified.*

Existing law prohibits various types of elder abuse, punishable by incarceration, fines, or both incarceration and fines, including imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, for specified types of abuse involving theft, embezzlement, forgery, fraud, or identity theft.

This bill would add to those offenses the use of a signature stamp in a financial transaction without the express written authorization of a stampholder who is an elder or ~~dependant~~ *dependent* adult, as specified. The bill would increase the amount of each of the fines otherwise imposed for the existing law offenses, and would provide that the additional fine amount be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense. The bill would provide for restitution for a violation of these provisions.

Because this bill would create new crimes, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 953.5 is added to the Financial Code, to
2 read:
3 953.5. (a) As used in this section, “signature stamp” means a
4 rubber or other synthetic stamp or device that is used to accurately
5 imitate the signature of an individual.
6 (b) A bank shall only issue a signature stamp to an existing
7 accountholder if either (1) the accountholder is present to request
8 the stamp and an employee of the bank witnesses and
9 acknowledges in writing that the signature stamp was requested
10 by the stampholder, or (2) the requesting accountholder’s signature
11 has been notarized on an appropriate form approved and issued
12 by the bank.
13 (c) A bank that issues a signature stamp to an accountholder
14 shall ~~(1) inform the accountholder of the risks associated with loss,~~
15 ~~theft, or misuse of the signature stamp, (2) specify, in consultation~~
16 ~~with the accountholder, a maximum dollar amount that may be~~
17 ~~withdrawn in a single transaction authorized by the accountholder~~
18 ~~by use of the signature stamp, and (3) establish, in consultation~~
19 ~~with the accountholder, a limit on the total amount of funds that~~

1 may be held in an account that is authorized to be accessed by use
2 of a signature stamp. If deposits to an account exceed the limit
3 established pursuant to this subdivision, or if the account is
4 overdrawn, the bank shall attempt to verify that the accountholder
5 is aware of the excessive deposits or overdraft, and shall take all
6 reasonable measures to ensure the safety of the account, including,
7 but not limited to, freezing the account until verification is obtained
8 from the accountholder. Nothing in this section shall be construed
9 to limit the authority of an accountholder to raise or lower the limit
10 on an account in consultation with an employee of the bank. *and*
11 *his or her rights and responsibilities as a stampholder, including,*
12 *but not limited to, the responsibility to review the account*
13 *frequently and report any unauthorized transactions promptly,*
14 *and to report a lost or stolen signature stamp as quickly as*
15 *possible, upon the discovery that it has been lost or stolen.*

16 (d) A bank shall only open a new account for a person using a
17 signature stamp to open the account if an employee of the bank
18 witnesses the affixing of the stamp by the stampholder or person
19 assisting the stampholder in the stampholder's presence.

20 (e) A bank shall only grant a primary accountholder's request
21 to add an additional signatory authority using a signature stamp
22 to an existing account if either (1) an employee of the bank
23 witnesses the affixing of the stamp and acknowledges in writing
24 that the signature stamp was affixed by the stampholder or person
25 assisting the stampholder in the stampholder's presence, or (2) the
26 requesting accountholder's signature has been notarized on an
27 appropriate form approved and issued by the bank. For purposes
28 of this section, "signatory authority" means the authority given to
29 an individual to utilize a signature stamp with the permission of
30 the primary accountholder.

31 (f) A bank shall only issue a Medallion Signature Guarantee
32 requested by use of a signature stamp, if an employee of the bank
33 witnesses and acknowledges in writing that the signature stamp
34 was affixed by the stampholder or person assisting the stampholder
35 in the stampholder's presence. For purposes of this section a
36 "Medallion Signature Guarantee" means a guarantee of authenticity
37 issued by a financial institution for an accountholder's signature
38 of approval for the transfer of a financial securities product,
39 including, but not limited to, approved signature guarantees issued
40 pursuant to the Securities Transfer Agents Medallion Program,

1 ~~the Stock Exchanges Medallion Program, and the New York Stock~~
2 ~~Exchange Medallion Signature Program.~~

3 *(d) A bank shall not honor a request to open a new account that*
4 *is received by mail from a signature stampholder.*

5 ~~(g)~~

6 *(e) Any person who uses a signature stamp in violation of*
7 *subdivision (d) or (e) of Section 368 of the Penal Code shall, in*
8 *addition to the penalties set forth therein, be liable for restitution*
9 *of all funds fraudulently obtained thereby, including the monetary*
10 *value of any goods or services so obtained.*

11 *(f) This section shall apply only to a natural person with respect*
12 *to his or her personal account and shall not apply to a natural*
13 *person acting in the capacity of a representative or an agent of an*
14 *entity that is not a natural person.*

15 SEC. 2. Section 14409.5 is added to the Financial Code, to
16 read:

17 14409.5. (a) As used in this section, “signature stamp” means
18 a rubber or other synthetic stamp or device that is used to accurately
19 imitate the signature of an individual.

20 (b) A credit union shall only issue a signature stamp to an
21 existing accountholder if either (1) the accountholder is present to
22 request the stamp, and an employee of the credit union witnesses
23 and acknowledges in writing that the signature stamp was requested
24 by the stampholder, or (2) the requesting accountholder’s signature
25 has been notarized on an appropriate form approved and issued
26 by the credit union.

27 (c) A credit union that issues a signature stamp to an
28 accountholder shall ~~(1) inform the accountholder of the risks~~
29 ~~associated with loss, theft, or misuse of the signature stamp, (2)~~
30 ~~specify, in consultation with the accountholder, a maximum dollar~~
31 ~~amount that may be withdrawn in a single transaction authorized~~
32 ~~by the accountholder by use of the signature stamp, and (3)~~
33 ~~establish, in consultation with the accountholder, a limit on the~~
34 ~~total amount of funds that may be held in an account that is~~
35 ~~authorized to be accessed by use of a signature stamp. If deposits~~
36 ~~to an account exceed the limit established pursuant to this~~
37 ~~subdivision, or if the account is overdrawn, the credit union shall~~
38 ~~attempt to verify that the accountholder is aware of the excessive~~
39 ~~deposits or overdraft, and shall take all reasonable measures to~~
40 ~~ensure the safety of the account, including, but not limited to,~~

1 freezing the account until verification is obtained from the
2 accountholder. Nothing in this section shall be construed to limit
3 the authority of an accountholder to raise or lower the dollar limit
4 on an account in consultation with an employee of the credit union.
5 *and his or her rights and responsibilities as a stampholder;*
6 *including, but not limited to, the responsibility to review the*
7 *account frequently and report any unauthorized transactions*
8 *promptly, and to report a lost or stolen signature stamp as quickly*
9 *as possible, upon the discovery that it has been lost or stolen.*

10 (d) A credit union shall only open a new account for a person
11 using a signature stamp to open the account if an employee of the
12 credit union witnesses the affixing of the stamp by the stampholder
13 or person assisting the stampholder in the stampholder's presence.

14 (e) A credit union shall only grant a primary accountholder's
15 request to add an additional signatory authority, using a signature
16 stamp, to an existing account if either (1) an employee of the credit
17 union witnesses the affixing of the stamp and acknowledges in
18 writing that the signature stamp was affixed by the stampholder
19 or person assisting the stampholder in the stampholder's presence,
20 or (2) the requesting accountholder's signature has been notarized
21 on an appropriate form approved and issued by the credit union.
22 For purposes of this section, "signatory authority" means the
23 authority given to an individual to utilize a signature stamp with
24 the permission of the primary accountholder.

25 (f) A credit union shall only issue a Medallion Signature
26 Guarantee requested by use of a signature stamp, if an employee
27 of the credit union witnesses and acknowledges in writing that the
28 signature stamp was affixed by the stampholder or person assisting
29 the stampholder in the stampholder's presence. For purposes of
30 this section a "Medallion Signature Guarantee" means a guarantee
31 of authenticity issued by a financial institution for an
32 accountholder's signature of approval for the transfer of a financial
33 securities product, including, but not limited to, approved signature
34 guarantees issued pursuant to the Securities Transfer Agents
35 Medallion Program, the Stock Exchanges Medallion Program, and
36 the New York Stock Exchange Medallion Signature Program.

37 (d) A credit union shall not honor a request to open a new
38 account that is received by mail from a signature stampholder.

39 (g)

1 (e) Any person who uses a signature stamp in violation of
2 subdivision (d) or (e) of Section 368 of the Penal Code shall, in
3 addition to the penalties set forth therein, be liable for restitution
4 of all funds fraudulently obtained thereby, including the monetary
5 value of any goods or services so obtained.

6 (f) *This section shall apply only to a natural person with respect*
7 *to his or her personal account and shall not apply to a natural*
8 *person acting in the capacity of a representative or an agent of an*
9 *entity that is not a natural person.*

10 SEC. 3. Section 368 of the Penal Code is amended to read:

11 368. (a) The Legislature finds and declares that crimes against
12 elders and dependent adults are deserving of special consideration
13 and protection, not unlike the special protections provided for
14 minor children, because elders and dependent adults may be
15 confused, on various medications, mentally or physically impaired,
16 or incompetent, and therefore less able to protect themselves, to
17 understand or report criminal conduct, or to testify in court
18 proceedings on their own behalf.

19 (b) (1) Any person who knows or reasonably should know that
20 a person is an elder or dependent adult and who, under
21 circumstances or conditions likely to produce great bodily harm
22 or death, willfully causes or permits any elder or dependent adult
23 to suffer, or inflicts thereon unjustifiable physical pain or mental
24 suffering, or having the care or custody of any elder or dependent
25 adult, willfully causes or permits the person or health of the elder
26 or dependent adult to be injured, or willfully causes or permits the
27 elder or dependent adult to be placed in a situation in which his or
28 her person or health is endangered, is punishable by imprisonment
29 in a county jail not exceeding one year, or by a fine not to exceed
30 twelve thousand dollars (\$12,000), 50 percent of which shall be
31 allocated to the adult protective services agency, or equivalent
32 elder abuse prevention agency, of the county prosecuting the
33 offense, or by both that fine and imprisonment, or by imprisonment
34 in the state prison for two, three, or four years.

35 (2) If in the commission of an offense described in paragraph
36 (1), the victim suffers great bodily injury, as defined in Section
37 12022.7, the defendant shall receive an additional term in the state
38 prison as follows:

39 (A) Three years if the victim is under 70 years of age.

40 (B) Five years if the victim is 70 years of age or older.

1 (3) If in the commission of an offense described in paragraph
2 (1), the defendant proximately causes the death of the victim, the
3 defendant shall receive an additional term in the state prison as
4 follows:

5 (A) Five years if the victim is under 70 years of age.

6 (B) Seven years if the victim is 70 years of age or older.

7 (c) Any person who knows or reasonably should know that a
8 person is an elder or dependent adult and who, under circumstances
9 or conditions other than those likely to produce great bodily harm
10 or death, willfully causes or permits any elder or dependent adult
11 to suffer, or inflicts thereon unjustifiable physical pain or mental
12 suffering, or having the care or custody of any elder or dependent
13 adult, willfully causes or permits the person or health of the elder
14 or dependent adult to be injured or willfully causes or permits the
15 elder or dependent adult to be placed in a situation in which his or
16 her person or health may be endangered, is guilty of a
17 misdemeanor. A second or subsequent violation of this subdivision
18 is punishable by a fine not to exceed four thousand dollars (\$4,000),
19 50 percent of which shall be allocated to the adult protective
20 services agency, or equivalent elder abuse prevention agency, of
21 the county prosecuting the offense, or by imprisonment in a county
22 jail not to exceed one year, or by both that fine and imprisonment.

23 (d) Any person who is not a caretaker who violates any provision
24 of law proscribing theft, embezzlement, forgery, or fraud, or who
25 violates Section 530.5 proscribing identity theft, or who uses a
26 signature stamp, as defined in subdivision (a) of Sections 953.5
27 and 14409.5 of the Financial Code, in a financial transaction
28 without the knowledge and express written authorization of the
29 stamp holder with respect to the property or personal identifying
30 information of an elder or a dependent adult, and who knows or
31 reasonably should know that the victim is an elder or a dependent
32 adult, is punishable by imprisonment in a county jail not exceeding
33 one year, or in the state prison for two, three, or four years, when
34 the moneys, labor, goods, services, or real or personal property
35 taken or obtained is of a value exceeding nine hundred fifty dollars
36 (\$950); and by a fine not exceeding two thousand dollars (\$2,000),
37 50 percent of which shall be allocated to the adult protective
38 services agency, or equivalent elder abuse prevention agency, of
39 the county prosecuting the offense, by imprisonment in a county
40 jail not exceeding one year, or by both that fine and imprisonment,

1 when the moneys, labor, goods, services, or real or personal
2 property taken or obtained is of a value not exceeding nine hundred
3 fifty dollars (\$950).

4 (e) Any caretaker of an elder or a dependent adult who violates
5 any provision of law proscribing theft, embezzlement, forgery, or
6 fraud, or who violates Section 530.5 proscribing identity theft, or
7 who uses a signature stamp, as defined in subdivision (a) of
8 Sections 953.5 and 14409.5 of the Financial Code, in a financial
9 transaction without the express written authorization of the
10 stampholder with respect to the property or personal identifying
11 information of that elder or dependent adult, is punishable by
12 imprisonment in a county jail not exceeding one year, or in the
13 state prison for two, three, or four years when the moneys, labor,
14 goods, services, or real or personal property taken or obtained is
15 of a value exceeding nine hundred fifty dollars (\$950), and by a
16 fine not exceeding two thousand dollars (\$2,000), 50 percent of
17 which shall be allocated to the adult protective services agency,
18 or equivalent elder abuse prevention agency, of the county
19 prosecuting the offense, by imprisonment in a county jail not
20 exceeding one year, or by both that fine and imprisonment, when
21 the moneys, labor, goods, services, or real or personal property
22 taken or obtained is of a value not exceeding nine hundred fifty
23 dollars (\$950).

24 (f) Any person who commits the false imprisonment of an elder
25 or a dependent adult by the use of violence, menace, fraud, or
26 deceit is punishable by imprisonment in the state prison for two,
27 three, or four years.

28 (g) As used in this section, “elder” means any person who is 65
29 years of age or older.

30 (h) As used in this section, “dependent adult” means any person
31 who is between the ages of 18 and 64, who has physical or mental
32 limitations which restrict his or her ability to carry out normal
33 activities or to protect his or her rights, including, but not limited
34 to, persons who have physical or developmental disabilities or
35 whose physical or mental abilities have diminished because of
36 age. “Dependent adult” includes any person between the ages of
37 18 and 64 who is admitted as an inpatient to a 24-hour health
38 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
39 Health and Safety Code.

1 (i) As used in this section, “caretaker” means any person who
2 has the care, custody, or control of, or who stands in a position of
3 trust with, an elder or a dependent adult.

4 (j) Nothing in this section shall preclude prosecution under both
5 this section and Section 187 or 12022.7 or any other provision of
6 law. However, a person shall not receive an additional term of
7 imprisonment under both paragraphs (2) and (3) of subdivision
8 (b) for any single offense, nor shall a person receive an additional
9 term of imprisonment under both Section 12022.7 and paragraph
10 (2) or (3) of subdivision (b) for any single offense.

11 (k) In any case in which a person is convicted of violating these
12 provisions, the court may require him or her to receive appropriate
13 counseling as a condition of probation. Any defendant ordered to
14 be placed in a counseling program shall be responsible for paying
15 the expense of his or her participation in the counseling program
16 as determined by the court. The court shall take into consideration
17 the ability of the defendant to pay, and no defendant shall be denied
18 probation because of his or her inability to pay.

19 SEC. 4. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.